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# Venture capital / private equity – investors vs founders: Who is the boss?

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Alex Carbonell

Gómez-Acebo & Pombo

Spain

acarbonell@gomezacebo-pombo.com
+34 93 415 74 00


Tyshanti de Jonge

Loyens & Loeff N.V.

Netherlands

tyshanti.de.jonge@loyensloeff.com
+31 10 224 6351


Michael Lind

Wolf Theiss

Austria

michael.lind@wolftheiss.com
+43 1 51510 5180


Moritz Maurer

Niederer Kraft & Frey AG

Switzerland

moritz.maurer@nkf.ch
+41 58 800 8224

# Introduction

- Main determining features
  - Corporate Governance
  - Different classes of shares
  - New financing rounds
  - Exit: Initiating, Leading, Implementing

- Two main scenarios:
  - VC / PE as minority shareholder
  - VC / PE as majority shareholder


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# Corporate Governance (examples) (I)

- Veto rights
  - Important shareholder matters and board matters (control-related rights on shareholder and board level)
  - Implementation of different classes of shares
  - Reflection in board regulations
- Right to appoint
  - Contractual right to appoint a representative to the board
  - If not formally represented on the board = observer


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# Corporate Governance (examples) (II)

- Good leaver vs bad leaver concept
  - When a shareholding manager leaves, remaining shareholders will not want him/her to continue to be involved
  - Determination what price should be paid for the shares (good leaver: market value; bad leaver: less)


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# Management and Consulting Fees

- Conflicting interests of Investors and founders
- Corporate governance issues (links to board remuneration)
- Tax issues (market value)
- May help investor block other advisors / potential new investors


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# Different Classes of Shares

- Determined by jurisdiction and corporate form
- Financial advantages:
  - Liquidation preference
  - Pricing for subsequent investor rounds
  - Dividend preference
- Corporate advantages:
  - Restrict founders/executive sale
  - Ease granting security over shares
- Other advantages:
  - Right to appoint board members
  - May add protection in addition to SHA


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# New Financing Rounds / Dilution (I)

- Two scenarios:
  - Issuance of shares to existing shareholders
  - Issuance of shares to new shareholders

- Issuance of shares to existing shareholders
  - Shareholder resolution
  - Simple majority / qualified majority / veto rights
  - (Pro rata) pre-emption right
  - Pay or dilute


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# New Financing Rounds / Dilution (II)

- Issuance of shares to new shareholders
  - Via issuance of shares (see above)
  - Adherence to the SHA
  - Mandatory financing by shareholders
  - External financing from banks


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# Exit: Initiating, Leading, Implementing

- Most investors will invest solely to ultimately exit from such investment
- Preferred exit vs qualified exit
- Liquidation preference: ‘waterfall’
- Obligation for founders/directors to stay on
- Tag along / drag along rights
- Preference for IPO?
- Market standard stand-off / lock-up in IPO
- Registration rights post-IPO


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Thank you for our attention!

Questions?



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